

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
DOCKET NO. 5-17-cv-00026-RLV

MSCI 2007-HQ12 PHILLIPS LANE, LLC, )  
  )  
  )  
Appellant,                                 )  
  )  
Vs.    )    ORDER  
  )  
  )  
LARRY DEAN AUSTIN, ET AL.,             )  
  )  
Appellee.                                    )

**THIS MATTER** is before the court on Appellee's Motion to Dismiss Appeal. Having considered Appellee's motion and reviewed the pleadings, the court will grant the motion.

**DISCUSSION**

The issue is whether the appeal is moot. The Fourth Circuit has established a four factor test for determining whether a bankruptcy appeal is moot: (1) whether appellant sought and obtained a stay; (2) whether the ordered relief has been substantially consummated; (3) the extent to which the relief requested on appeal would affect success of the equitable relief; (4) and the extent to which relief would affect third party interests. *See Mac Panel v. Va. Panel Corp.*, 283 F.3d 622, 625 (4<sup>th</sup> Cir. 2002); *accord, In re U.S. Airways Grp, Inc.* 369 F.3d 806, 809 (4<sup>th</sup> Cir. 2004). No one factor is dispositive; failure to seek a stay alone, for example, is insufficient to find mootness. *See In re Calvert Vill. Ltd. P'ship*, Case No. 99-1383, 2000 WL 123965, at \*2 (4<sup>th</sup> Cir. Feb. 2, 2000); *In re Winslow*, 473 B.R. 94, 100 (E.D.N.C. 2012).

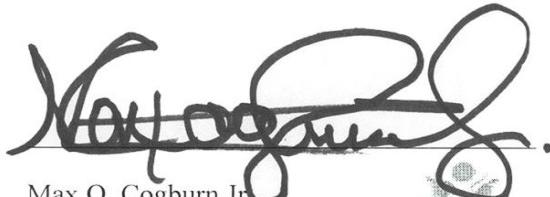
Here, the four factors tilt toward Appellee. First, Appellant failed to seek and obtain a stay. Second, the ordered relief has been substantially consummated; funds have been

distributed, orders of abandonment entered, and a general release executed and delivered. Third, the requested relief would affect success of the granted relief, as it would require reversing multiple abandonment orders and unwinding the aforementioned substantially consummated relief. Fourth, the requested relief would affect third party interests, as it would create uncertainty for the estate's creditors as they are forced to await further litigation and court action. All four factors thus support Appellee, and as a result, the court shall grant Appellee's motion to dismiss this appeal as moot.

#### **ORDER**

**IT IS, THEREFORE, ORDERED** that Appellee's Motion to Dismiss Appeal (#4) is **GRANTED** and this appeal is **DISMISSED** as moot.

Signed: September 5, 2017

  
Max O. Cogburn Jr.  
United States District Judge